

Allegheny Front Alliance  
94 Orchard Street  
Keyser, WV 26726  
May 17, 2011

[Alleghenyfrontalliance@frontier.com](mailto:Alleghenyfrontalliance@frontier.com)



*"To protect the Allegheny Front's cultural and natural environment"*

Attn: Wind Energy Guidelines  
Attn: Eagle Conservation Plan Guidance  
Division of Fisheries and Habitat Conservation  
U.S. Fish and Wildlife Service  
4401 North Fairfax Drive  
Mail Stop 4107  
Arlington, VA 22203-1610  
[windenergy@fws.gov](mailto:windenergy@fws.gov)

Allegheny Front Alliance (AFA) represents interested community members concerned over the construction and proposed development of industrial wind projects and its impact on wildlife and habitat.

AFA is a legal West Virginia business entity. AFA mission is *"To protect the Allegheny Front's cultural and natural environment."* Since January 2009, AFA opposed the development of two West Virginia Projects, AES, New Creek Project – (# 08- 2105-E-CS) and Pinnacle Project ( # 09-0360-E-CS) AFA filed to intervene in both cases. The WV PSC ruled to permit these projects. The projects will be constructed on or adjacent to the Allegheny Front, located in Mineral and Grant County, West Virginia.

AFA believes there are serious environmental issues the industrial wind corporations do not address. AFA is particularly concerned that projects approved by state public service commission are without regard to consulting state and or national wildlife agencies. Currently political support, federal tax incentives, and promises of windfall economics support industrial wind projects. These policies directly influence conducting effective wildlife management practices during the pre-construction, construction, and post construction project phases.

The Migratory Bird Act prohibits "taking" individual migrating birds. U.S. Fish and Wildlife practice requires employing all practical means to avoid fatalities. The role that wind turbines play in the cumulative impact on birds, when combined with other adverse effects, is unknown.

AFA submits these comments on the Draft Voluntary Land-Based Wind Energy Guidelines and the Draft Eagle Conservation Plan Guidance prepared by the U.S. Fish and Wildlife Service.

**Question: How could the Guidance better address issues related to wind power development?**

Historical Importance of the Allegheny Front

The Allegheny Front lies in the mountain ridges of the Appalachian Plateau. Raptors and other birds use the ridge and valley for migration. Protective regulations are critical to protect the Allegheny Front's unique biological, ecological, geological, geographical, cultural, and historical resources. Historically, the Allegheny Front supports the oldest continuous operating landbird migration station in North America. In 1958, the Brooks Bird Club began conducting bird identification and banding stations. The [Allegheny Front Migration Observatory](http://www.brooksbirdclub.org/afmo) (AFMO) conducted their 50<sup>th</sup> year of banding at Dolly Sods, WV in the fall of 2007. AFMO has been invaluable for learning about local monitoring and regional population migratory patterns. <sup>1</sup>(Carlisle, 2005) AFMO annual reports provide count of species captured, migration dates, weather, and wind conditions. The visitor's logs records visitors, state or country of residence, school field trips and hours volunteering. The public appreciates wildlife and birding opportunities. The data from AFMO is publicly available.

AFMO serves as a large data network system. AFMA publically shares its data and methods. AFMO data studies trend analysis, habitat relationship, provides a method of standardization, and a clear focus for future study. Summary of seasonal data reported:

Season	(date)	Visitors	Bald eagles*	Golden eagles*	Others*
1999 <sup>2</sup>	Aug 15-Oct 15	1,459	Not reported	NR	NR
2000 <sup>3</sup>	Aug 13 – Oct 15	1,636	NR	NR	NR
2001 <sup>4</sup>	Aug 12 – Oct 13	1,728	2	3	3 Peregrine Falcon 12 Black Vulture
2002 <sup>5</sup>	Aug 11 – Oct 17	1,650	NR	NR	NR
2005 <sup>6</sup>	Aug 13 – Oct 16	NR	NR	NR	NR
2006 <sup>7</sup>	Aug 13 – Oct 15	1,093	5	2	4 Northern Harrier 1 peregrine Falcon 1 Black Vulture
2007 <sup>8</sup>	Aug 11 – Oct 21	1,193	NR	NR	NR
2008**			9	2	1 Northern Harrier 6 Black Vulture

<sup>1</sup> Carlisle, J. D., C. John Ralph (2005). Towards the Establishment of Landbird Migration Monitoring Networks in the United States. *USDA Forest Service Gen. Tech. Rep. PSW-GTR-191*, 698-700. Retrieved from [http://www.fs.fed.us/psw/publications/documents/psw\\_gtr191/psw\\_gtr191\\_0698-0700\\_carlisle.pdf](http://www.fs.fed.us/psw/publications/documents/psw_gtr191/psw_gtr191_0698-0700_carlisle.pdf)

<sup>2</sup> <http://www.brooksbirdclub.org/afmo1999.pdf>

<sup>3</sup> <http://www.brooksbirdclub.org/afmo2000.pdf>

<sup>4</sup> <http://www.brooksbirdclub.org/afmo2001.pdf>

<sup>5</sup> <http://www.brooksbirdclub.org/afmo2002.pdf>

<sup>6</sup> <http://www.brooksbirdclub.org/afmo2005.pdf>

<sup>7</sup> <http://www.brooksbirdclub.org/afmo2006.pdf>

<sup>8</sup> <http://www.brooksbirdclub.org/afmo2007.pdf>

2009**		2	2	6 Northern Harrier 2 Peregrine Falcon 2 Black Vulture
2010**		17	2	5 Northern Harrier 1 Peregrine falcon

\* Fly over data collected since 1990, \*\* Data from Cynthia Ellis, Brooks Bird Club.

**Question: How could the Guidance better address issues related to wind power development?**

A broad public sector has a high interest in wildlife because birds, especially eagles, raptors and songbirds, provide a visual clue to the geographical integrity of the landscape. AFA recognizes that migratory bird flights do not stop at a project site or a state line. That migratory bird patterns extend beyond national boundaries. AFA values ecological connectivity. AFA supports effective conservation and preservation policies that promote, protect and preserve the Allegheny Front natural wildlife corridors.

Require individual project assessment and regional and cumulative impact analysis. Standardized measures and statistical modeling occurs for multiple projects sharing geographical and ecological connectivity.

US FWS should conduct community / public scoping hearings. Wildlife studies conducted by the wind developers should be available to the community for review, including all data. There should be at a minimum of two – three years of pre-construction studies conducted. Major stakeholders, that fairly represent the community, should be consulted.

AFA supports the positions. (1) Commercial industrial wind projects are not a scientifically sound solution to ‘global warming’. (2) Industrial wind projects are not a commercially viable solution of energy on its own. (3) Industrial wind projects are not environmentally responsible. The placement of industrial wind projects atop major migratory pathways is destructive and threatens the risk to wildlife.

**Question: Should the Guidance be voluntary or mandatory?**

Our argument follows:

**Sitting Issues**

The end product of wildlife mortality represents the end product of a sequence of events involving the wildlife at risk (host), the environment, and the lethal or causative agent (> 400’ feet towers and spinning blades). Environmental changes lead to wildlife mortality either directly (contact with turbines) or through increase migration exposure between industrial wind project sites and surrounding locations.

- Species affected include age, sex, (selective mortality to age and sex)
- No scientific studies for specific population at risk use proven statistical methods addressing reliability and validity
- Limited studies on populations movement, source or destination
- Population movement in relationship to environmental factors include storms, precipitation, temperature, and wind
- A study of specific project or problem areas includes habitat, foraging areas, land use and distinctive features.

**Question: Should the Guidance be voluntary or mandatory?**

AFA supports the position that guidance be mandatory. Wildlife is a national heritage and resource. Wildlife deserves protection.

For industrial wind projects located along the Allegheny Front, published academic peer-reviewed studies and data are limited. Presently mass marketing drives wind development, promises of employment and financial incentives. Minimal conversation occurs within rural communities. Many individuals believe industrial wind offers a structural engineering fit. It solves the energy crisis. Requiring mandatory requirements offers system wide protections. Decision-making and policy development should be data driven and not using ‘gut feeling’ marketing spins and branding.

**Forest Fragmentation and Wildlife Impact**

Seeking wind developers to adhere to voluntary guidelines is unacceptable. AFA shares the way one developer, US Wind Force (<http://web.uswindforce.com/>) ignores and fails to take serious the current US Fish & Wildlife sitting guidelines.

The proposed [Pinnacle Project](#) represents 23 turbines on the Allegheny Front. The project will extend over 3 miles. Each turbine requires clearing over 4 acres of secondary hardwood and forest edges. This construction operation fragments the existing ridgelines.

Other environmental issues affecting wildlife include existing habitat loss, increased detrimental edge effects, increase in invasive species pathways, increase in stream runoff, and the indirect effects of blade movement, noise, and light flicker.

The Allegheny Front and many other ridgelines form an important migratory pathway for numerous birds and bats during spring and fall migrations.

- *How can the US Wind Force (developer) and the project owner (Edison Mission Energy) justify these environmental insults for such little gain in societal benefits?*
- *What are the public policy and management assurances? The public deserves data access. Science should drive post construction studies and not the developer’s economic gain.*

Studies show that Golden Eagles (*Aquila chrysaetos*), in particular, are more than likely susceptible to being killed by rotating turbine blades during migration along the Allegheny Front. They migrate along the Front when winds are from the SE at an altitude with the blade sweep of proposed wind turbines. Within the United States, *the Bald and Golden Eagle Protection Act* legally protect the Golden eagle.

- *“How can the project be built without increasing the mortality on the Gold Eagle and other birds migrating along the Front?”*

The Appalachian ridgelines, due to their elevations, provide habitat to a suite of animals and plants not found at lower elevations. These high elevation habitats are limited in extent compared to lower elevation sites.

- *Why should we detrimentally alter these “sky islands” for a low amount of electricity and small number of permanent jobs?*

The eastern small-footed bat (*Myotis leibii*) is extremely rare and critically imperiled in West Virginia and endangered in nearby Maryland. This bat inhabits rock outcrops on Appalachian ridgelines—known from the Allegheny Front.

- *How can this project be build without imperiling this bat and its roosting and foraging habitat?*

The same applies to the Allegheny woodrat (*Neotoma magister*) which is either very rare and locally throughout its range or found locally in a restricted range.

- *How can this project be build without imperiling this Woodrat and its den and foraging habitat?*

Rock outcrops are also habitat to the Timber rattlesnake (*Crotalus horridus*). This reptile is rare in many parts of its range.

- *This reptile is on the Pinnacle site and nearby on the proposed Dan's Mountain project site. Studies conducted by US Wind Force consultants only mention the reptile in their reports. Why does this reptile have minimal attention protecting it?*

AFA is concerned industrial projects are only reviewed as a single project entity and a regional approach is not considered. For migratory birds, stopover habitat is becoming increasingly important. It is essential to understand the biological life migration history of migrants. This study of stopover monitoring is useful to identification, habitat patterns, stopover ecology, and migratory connectivity. The Pinnacle Project represents an important stopover habitat because it serves as an important funneling area.

Managed by the WV Department of Natural Resources, Alleghany Wildlife Management Area joins the project on three sides. Within five miles is Jennings Randolph Lake operated by the US Army Corp of Engineers. [Jennings Randolph Lake is a know bald eagle nesting area.](#)<sup>9 10 11</sup>

AFA offers this example of how developers promote projects without regard to wildlife loss and environmental consequences.

#### Pinnacle is a significant leading line for eagle migration

The Pinnacle Project is a unique environmental area to observe migratory songbirds and raptors.<sup>12</sup>

*“Overall raptor migration at Pinnacle indicated that the ridge is a relatively important leading line for these birds during fall. (p. 12). It must be concluded that the ridge system at Pinnacle is a significant leading line for Golden Eagles migrating northward in spring. (p. 15)*

*The raptor migration rate at Pinnacle is greater than most hawk watches in the northeast, with the exception of several that are better known and recognized to be significant raptor migration sites. (Zalles and Bildstein 2000) (p. 14)*

*Fall Golden Eagle migration at Pinnacle is significant and comparable in volume to that registered at some of the hawk watch sites considered the most important inland in eastern North America. For example, 99 Golden Eagles in a fall season is only slightly lower than the 2002-*

<sup>9</sup> <http://quadcrewriders.forumotion.com/t110-jennings-randolph-lake-bald-eagles>

<sup>10</sup> [http://deepcreeklakefamilyactivities.com/jennings\\_randolph\\_lake.html](http://deepcreeklakefamilyactivities.com/jennings_randolph_lake.html)

<sup>11</sup> <http://www.nab.usace.army.mil/Recreation/jenran/news.htm>

<sup>12</sup> <http://web.uswindforce.com/images/stories/projects/PinnaclePermit/Appendix%20S%20-%20Avian%20Risk%20Assessment.pdf>

*2006 average of 134 birds at Hawk Mountain, 234 at Waggoner's Gap, and 160 at Allegheny Front, all in Pennsylvania. (p. 13)*

*Spring Golden Eagle migration at Pinnacle was significant and comparable in volume to that registered at some of the hawk watch sites considered important in eastern North America. (p. 15)*

Studies conducted in the fall 2007 and spring of 2008 revealed the following highlights:

#### Fall 2007

- A total of 87 days (699 hours) of observations occurred between September 1 and December 15, 2007.
- In fall, 5,980 raptors (8.6 per hour) of 16 species were observed. 89% of the species included Broad-winged, Red-tailed, Sharp-shinned Hawk, and Turkey Vultures
- *The remaining included, 99 Golden Eagles and 4 "rare" species in West Virginia: Bald Eagles (N = 57), Northern Harrier (N = 76), Peregrine Falcon (N = 13), and Northern Goshawk (N = 13).*
- With respect to altitude of flight, 47% flew at low altitudes, 36% flew at mid-level altitudes (rotor swept zone), and 17% flew at high altitudes.

#### Spring 2008

- A total 2,172 raptors (5.3 birds per hour) of 14 species were observed.
- Turkey Vulture, Broad-winged, Red-tailed, and Sharp-shinned Hawk accounted for 77% of raptors observed.
- *102 Golden and 37 Bald Eagles were observed. Three West Virginia "rare" species observed were Bald Eagle, Northern Harrier (n = 14), and Peregrine Falcon (n = 1).*

The project consultants, Curry & Kerlinger, LLC concluded:

- *"Risk to migrating raptors is not expected to be biologically significant, although collisions may occur."*
- *"Based on the small numbers of migrants observed and their flight behavior, risk to land and water birds migrating at Pinnacle is not likely to be biologically significant." (p. 3 executive summary, 2009 report)*

For AFA these findings are concerning. First, no hypothesis was stated. Second, no statistical analysis or modeling conducted. Third, the authors do not support their findings with referenced journals but only express personal opinion. The consultants write:

- *"No known fatalities at eastern sites have been reported to date and fatalities..."*
- *"Although the species (Golden Eagles) is known to collide with turbines at Altamont, migrants may be less susceptible."*
- *"Migrating raptors have almost never been demonstrated to collide with manmade structures, including the wind turbines at Ned Power, about 9 miles down-ridge from Pinnacle."*

The consultants reference the Ned Power Project. This project consists of 132 turbines, completed only in June 2009, almost five months after the submission of the report. At the Ned Power Site, no post construction studies were performed. No studies were reported to the Public Service Commission of WV or referenced in journals. Nearby the Ned Power Project, Mountaineer Project represents the largest bat kill / songbirds in one night.

### Observational Methods of Field Studies Questioned

AFA is concerned submitted studies were methodologically flawed. As an example: BHE Environmental conducted an avian risk assessment on March 4-5 2008. *“The biologists “walked the proposed turbine string and associated collector lines, searching for nest structures within 660 feet of each side of the proposed turbine string for a total survey of 1,320 feet. Additionally, biologist searched for nests along public roads located within and adjacent to the proposed turbine string.”*

*“Biologist also conducted a limited survey at Piney Swamp, located immediately to the west of the proposed turbine string. Two biologists scanned the habitat around the swamp from three different locations for 20 minutes each. In addition to conducting the time-constrained survey, brief interviews with two landowners adjacent to the swamp were conducted. “(p. 15, BHE Appendix S, Avian Risk Assessment)*

This report is concerning for the following reasons:

- (1) The project site extends beyond three miles. The site terrain is rocky, rugged and not easily traveled. No trails exist. No GPS data supports the observed fieldwork.
- (2) Bald eagles seek solitude, searching for nests along public roads are not likely to produce favorable results. Public roads or boundaries not identified. How many miles of roads were covered?
- (3) Observers had inadequate time in the Piney Swamp area.
- (4) The wind developer leases the adjacent landowner's property. Expressing potential conflicting and self-serving interests this method represents secondary data collection and not primary data.

In a letter, dated Sept 30, 2008, the West Virginia field Office US FWS submitted a letter to US Wind Force wildlife consultants, (Paul Kerlinger and Mike Sponsler) expressing concerns for the Pinnacle Wind Project.<sup>13</sup> This twenty-page document outlines concerns related to 1) habitat characterization and assessment, 2) avian risk assessment (night migrating bats, eagles) 3) migratory bird concerns, 4) bat risk assessment, and 5) fourteen pre-construction and post construction recommendations.

Summary highlights of the letter by the Deborah Carter, Field Supervisor are:

- “We also are concerned about the risk of collision mortality to golden and bald eagles using air space over the proposed Pinnacle wind power project.”
- “Considering that bald and golden eagle numbers are increasing, we believe the site poses a high risk of mortality to eagles over the anticipated long operational life of the project (20+ years).
- “For a number of reasons, we believe the risk to migratory birds (including raptors) is higher than indicated in the Pinnacle Risk Assessment.”
- “Furthermore, we are concerned about the cumulative impact of wind power projects in the Allegheny Front.”
- “We therefore believe the risk to migrating birds from the proposed Pinnacle project is higher than indicated in the Risk Assessment because: (1) the proposed project is located in a major migration pathway. (2) Mortality rates at wind power sites tend to be higher long forested ridgelines, (3) a number of projects are planned or operating in the Allegheny Front.”

---

<sup>13</sup> <http://www.scribd.com/doc/41532593/USFWS-Pinnacle-93009-Letter-USWE>



- “Among other things, the migratory Bird Treaty Act (MBTA, 16 U.S.C. 703-712) prohibits the taking, killing, injuring or capture of listed migratory birds. The unauthorized taking of even one bird is legally considered a “take” under the MBTA and is a violation of the law. Bald and golden eagles are afforded additional legal protection under the Bald and Golden Eagle Protection Act (Eagle Act, 16 U.S.C. 668). Neither the MBTA nor its implementing regulations found in 50 CFR Part 21 provide for the permitting of ‘incidental take’ of migratory birds that may be killed or injured by the wind.”

AFA obtained the USFWS letter using a FOIA request. The letter was introduced during October 26-27 2009 hearing. What follows is WV PSC order, (*Commission Order Granting a Sitting Certificate for a Wholesale Electric Generating Facility, Related Transmission Support Line and Associated Interconnection Facilities on Green Mountain in Mineral County*) dated January 11, 2010 and how they examined the document.

- “AFA also suggested that Pinnacle shielded, from the Commission, a September 30, 2009 letter from the USFWS regarding the Project. Initial Brief pp. 9-11”
- “Pinnacle responded that this suggestion was wholly without merit and that Pinnacle correctly assumed that AFA would introduce the USFWS Letter at the evidentiary hearing. Reply Brief pp. AFA Ex. 6 (Oct. 26, 2009). Pinnacle asserted that had the USFWS believed that the letter was crucial to the Commission’s decision. USFWS could have copied the Commission when the letter was sent to Pinnacle.”
- “Pinnacle further argued that the USFWS letter is not unique to this Project and it is common for USFWS to criticize aspects of developer study efforts, to ask for more pre-and post-construction studies, and to magnify the possibility, however remote, of an unauthorized take. Initial Brief”
- “These USFWS actions, however, do not mean that the Project should not be built or that Pinnacle is obligated to conduct more studies or apply for an incidental take permit.”
- “Despite the USFWS normal recommendation that three years of pre-construction study be undertaken, the Pinnacle witness testified that he could not recall any projects in which three years of such study had been conducted. Tr. p. 154 (Kerlinger) (Oct. 26, 2009).”
- “Moreover, Pinnacle asserted that when USFWS wants to signal its opposition to a project, it knows how to do so, as it did in Liberty Gap.”
- “Initial Brief citing AFA Ex. 8 p. 7 (Sept. 28, 2006 letter from USFWS to Liberty Gap attorney p. 7)”
- “We conclude with reasonable certainty that during the operational life of the project, federally listed species will be taken.” In this instance, however, USFWS did not object to the Pinnacle Project, but reiterated its “willingness to work with [Pinnacle] to develop measures to avoid and minimize impacts to migratory birds, including eagles.” AFA Ex. 6 pp. 7, 10 Based on the record, it is clear to us that Pinnacle adequately consulted with the USFWS and WVDNR concerning the scope of the studies undertaken by Pinnacle and its experts, during the development and implementation of those studies. Finally, the scope of work performed in this proceeding is similar to that which has been deemed sufficient in previous cases. Laurel Mountain Sitting Order p. 34. Accordingly, the Commission concludes that the Pinnacle surveys were reasonable and sufficient.”

AFA asserts that US Wind Force, the developer, has limited intention to working with US FWS. WV PSC in granting the Pinnacle Project permit established a Technical Advisory Committee to address post construction “*studies undertaken during the first year of commercial*



*operation. The Project is not expected to have a significant impact on bat or avian life. Pinnacle and the Technical Advisory Committee (TAC) will consider in good faith whether additional Studies during the second and third years of Project operations are necessary and cost-justified, and whether the scope of any such Studies during those years might reasonably be modified. Although it may choose to do so, Pinnacle will have no obligation to conduct any Studies beyond the third year of commercial operation.”*

AFA express the following concerns:

1. What if no risk is assessed during the first year? How will this risk be independently verified? How will the project be monitored after three years? What policies will exist to monitor the project in future years?
2. TAC lacks organization standards. Who will serve—member selection, purpose, financial responsibilities, and meeting requirements?
3. Economic and social justice is not considered. AFA is an interested stakeholder. The community deserves to have access to data collection to challenge if further studies are necessary.
4. There is a lack of directives and protocols for conducting post construction studies.
5. No agreement requirements define financial responsibility. This is burdensome on the US FWS state field offices. With limited staff and financial restraints, serving on a TAC can reduce the USFWS in carrying out other duties.
6. No memorandum of agreement exists between USFWS and US Wind Force. WV PSC has no authority to mandate US FWS and WV DNR to participate.
7. Post-construction studies will begin after the project is completed. This limits the proper study protocol.
8. Wind developer dictates their voluntary terms.

AFA supports the position that USFWS should require mandatory performance. USFWS should protect wildlife and not promote the development of Wind Energy.

AFA requests that wildlife study monitoring occurs throughout the project life, including during the decommission process and two years after the project.

**Question: How could the Guidance better address the responsibilities of Tribal, State, and Federal agencies?**

#### Migratory Geographical Concerns:

AFA believes it is important that the US Fish and Wildlife Service understand the developers true intentions.

US Wind Force, LLC “is an independent, privately held developer of renewable energy projects. Currently active in the Mid-Atlantic region with projects under development in Maryland, Pennsylvania and West Virginia; US Wind Force is among the fastest growing wind energy developers in the United States.” Since 2002, it has proposed the following wind projects.

Project Name	Identification #	# Turbines –size	Status	Remarks
<a href="#">Mount Storm</a> <sup>14*</sup>		89 turbines	WV Approved	
<a href="#">Liberty Gap</a> <sup>15</sup>		50 turbines	WV Pending	

<sup>14</sup> [http://web.uswindforce.com/index.php?option=com\\_content&task=view&id=3&Itemid=4](http://web.uswindforce.com/index.php?option=com_content&task=view&id=3&Itemid=4)

<sup>15</sup> [http://web.uswindforce.com/index.php?option=com\\_content&task=view&id=5&Itemid=6](http://web.uswindforce.com/index.php?option=com_content&task=view&id=5&Itemid=6)

<a href="#">Dan's Mountain</a> <sup>16</sup>		29 turbines	MD Approved	
<a href="#">Pinnacle Project</a> <sup>17</sup>		23 turbines 55 mw	WV Approved	
<a href="#">Savage Mountain</a> <sup>18, 19</sup>	Case No. 8939	25 turbines 40 mw	WV Approved	
Meadow Mountain			MD proposed	
South Avenue- Zion Church			WV proposed	
Black Rock			WV proposed	
Rich Mountain			WV Proposed	

The map below represents the approximate locations of proposed Maryland Wind Energy Projects. Currently two Maryland projects are now operating. These projects are the Roth Rock and the Criterion Project. Both projects are located in Garrett County.

AFA is concerned the multiple projects will influence migratory and residential bird populations. AFA is concerned how multiple geographical proximity projects will affect the bird populations. Although each individual project has unique design, number and location of turbines, the number of birds and species, especially migratory birds, and the associated risk for cumulative projects is unknown.

#### Issues of concern:

- (1) Cross-state borders issues are not considered. State sitting regulations for industrial wind projects differ. Maryland requires no formal environmental study for projects under 70 MW. Virginia is in the process of rule making. West Virginia does not consult its own state agencies concerning project accuracies. Lack of consistency threatens wildlife; the only alternative is effective wildlife management policies addressing state, area, and regional issues.
- (2) There is no requirement for standardized pre-construction and post construction wildlife studies. It is difficult to make project site comparisons. Study methodology differs between project sites. In ability to assess projects because, lack of reliability and validity.
- (3) Studies are descriptive, lacking hypothesis testing. There is limited agency inter, intra state networking, partnerships, studies and discussions.
- (4) Rare, threatened and endangered species status differs between states, i.e. small-footed bat.
- (5) The cumulative impacts of multiple projects within a state or region are not considered.
- (6) Rural counties lack authority to regulate wind projects.<sup>20</sup> Inadequate zoning and land use places increases the risk to wildlife. A bill that would have authorized Garrett County commissioners to control the development of wind farms in the county died in the Maryland General Assembly. Commissioners will continue to look for ways to have some control over wind turbines in the county.

The map<sup>21</sup> below illustrates how multiple sitting of wind projects with a region can have a cumulative impact on migratory patterns. The map also illustrates how across state boarder sitting issues can influence migratory wildlife management practices. Pre-construction and post

<sup>16</sup> [http://web.uswindforce.com/index.php?option=com\\_content&task=view&id=6&Itemid=7](http://web.uswindforce.com/index.php?option=com_content&task=view&id=6&Itemid=7)

<sup>17</sup> [http://web.uswindforce.com/index.php?option=com\\_content&view=article&id=43&Itemid=17](http://web.uswindforce.com/index.php?option=com_content&view=article&id=43&Itemid=17)

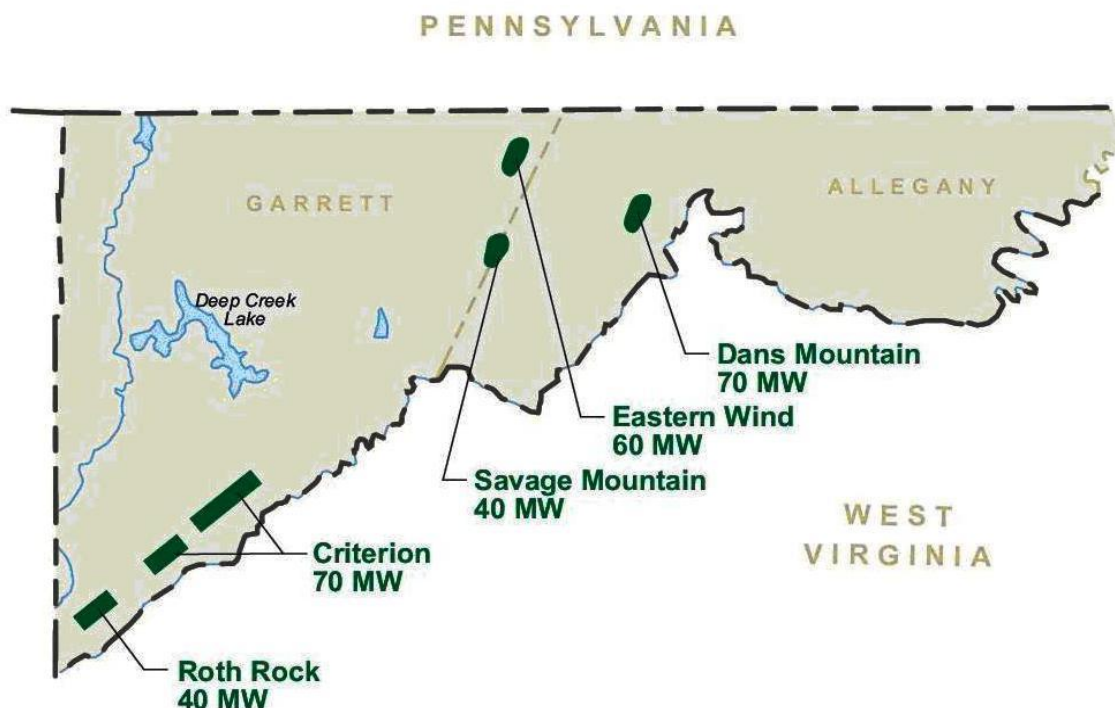
<sup>18</sup> <http://esm.versar.com/pprp/bibliography/PPSE-USFW-01/WindForce%20ERD%20Final%20Aug06.pdf>

<sup>19</sup> <http://webapp.psc.state.md.us/intranet/Casenum/CaseAction.cfm?CaseNumber=8939>

<sup>20</sup> <http://www.windaction.org/news/31493> , <http://times-news.com/local/x1527122179/Garrett-wind-regulation-measure-dies-in-state-legislature>

<sup>21</sup> Source: [http://esm.versar.com/pprp/ceir15/Report\\_2\\_1\\_3.htm](http://esm.versar.com/pprp/ceir15/Report_2_1_3.htm)

construction wildlife studies are not standardized. There is limited discussion between state wildlife agencies. No regional studies have been conducted.



Project	MW Size	Location	Nearest Town	Status
Criterion / Clipper, Constellation*	70	Backbone Mtn.	Oakland	Operating
Savage Mtn.	40	Savage Mtn.	Lonaconing	Approved
Roth Rock – Synergics**	50	Backbone Mtn.	Oakland	Operating
Dan’s Mtn.	70	Dan’s Mtn.	LaVale	Approved
Eastern Wind – Synergics <sup>22 23</sup>	60	Four-Mile Ridge	Frostburg	Planning Stage

Maryland's first two wind projects, Constellation and Roth are facing mounting pressure from environmental groups that insist the developers are endangering the Indiana bat, a creature listed under the Endangered Species Act (ESA). \*Constellation indicates will apply for an Incidental Take Permit from USFWS. \*\*The Roth Rock Project is 1.5 miles from the Maryland – West Virginia border. To date no ITP has been issued.

*Synergics has no plans to pursue an ITP, according to Frank Maisano, spokesperson." We see this for what it is ... a delaying tactic," Maisano says. "We're passed the eleventh hour; we're about ready to begin testing. " He says that groups such as Save Western Maryland were emboldened by the West Virginia case involving Invenergy. "What happened in West Virginia has no bearing on what's going on here," he says. "Every case is different. There hasn't been an endangered bat found in this area in 15 years."*<sup>24</sup>

<sup>22</sup> <http://www.windaction.org/news/31167>, <http://times-news.com/local/x2016390120/Wind-farm-developer-wants-power-line-through-Frostburg>

<sup>23</sup> <http://www.windaction.org/news/31733>, <http://times-news.com/local/x966120437/Wind-power-developer-requests-county-easement>

<sup>24</sup> [http://www.nawindpower.com/e107\\_plugins/content/content.php?content.7184](http://www.nawindpower.com/e107_plugins/content/content.php?content.7184)

**Question: How could the guidance better address the responsibilities of Tribal, State, and Federal Agencies?**

AFA supports an effective policy that will address cumulative wildlife impact. This policy must have interagency agreements, policy developments and networking provisions.

AFA is concerned the multiple projects will influence migratory and residential bird populations. AFA is concerned how multiple geographical proximity projects will affect the bird populations. Although each individual project has unique design, number and location of turbines, the number of birds and species, especially migratory birds, and the associated risk for cumulative projects is unknown.

If individual projects are granted an ITP, what represents a reasonable take? As an example, how will the USFWS address twenty-wind projects located within a 100-mile radius of each other? Theoretical hundreds of eagles could be killed over the 20-year life of project. What provisions protect residential eagles?

**Question: If the Guidance should not be binding in their entirety, which provisions should be binding?**

AFA argues US Wind Force and Edison Mission Energy have limited intention to reduce the mortality of wildlife with the construction and operation of their projects. AFA provides the following evidence to support their claim:

1. February 2003, US Wind Force (Savage Mountain Wind Project) reported the following in the Maryland Outdoor Club Newsletter, *“Hearing Examiner Allen Freifeld’s recommendation comes after a deal negotiated last month by the company, the state Department of Natural Resources and naturalists to prevent significant bird deaths from the three bladed turbines 500 feet above the ground. The agreement includes a \$20,000 contribution by U.S. Wind Force toward a bird migration study at the site after the project is built. It also requires a partial shutdown of the turbines if 100 birds or bats are killed in a 24-hour period.”*
  - This is concerning. US Wind Force fails to seek an incidental take permit. Who will be counting the bird mortality? What happens if only 98 birds are killed in a 24-hour period? What happens if there were two kill nights of 50 birds each night? What happens if a golden or bald eagle is included? What determines a partial shutdown?
  - What wildlife management expertise does a Public Service Commission hearing examiner have?
  - Risk assessment occurs before a project is constructed and not later.
2. In 2008, US Wind Force proposition to construct up to 100 wind turbines in the Savage and Potomac State forest was halted in 2008 after the State held two public hearings and received about 1,400 comments. The vast majority of which were opposed to allowing wind development on State-owned lands. Subsequently, Governor O’Malley announced he would not permit wind development on State-owned lands.<sup>25</sup>
  - This US Wind Force proposal is concerning. State Forests are important for wildlife. Forests offer protection, food and water, habitat and migration stopover points. AFA believes the public is concerned about the protection of wildlife. “The Maryland Department of Natural

---

<sup>25</sup> <http://www.windaction.org/opinions/13276>, <http://times-news.com/archive/x1540410664>,  
<http://www.vawind.org/Assets/Docs/Articles/BaltimoreSun-041208.pdf>

Resources received 1,312 e-mails and letters from all over the state, and 83% of the senders were opposed to turbines in state forests.”

3. To AFA's knowledge, US Wind Force and Edison Mission Energy (EME) have made no contact with the West Virginia US FWS regarding the TAC. Currently the project developer is now removing timber from the project site. In January 2011, AFA asked in a public meeting if US Wind Force or EME would be applying for an Incidental Take Permit. Project developer, Dave Friend, stated no because it is not needed or required.
4. The Pennsylvania Game Commission issued its WIND ENERGY VOLUNTARY COOPERATION AGREEMENT SECOND SUMMARY REPORT: "This report reveals which species are most susceptible to impacts from wind turbines and how much mortality is occurring in Pennsylvania." <sup>26</sup> Edison Mission Energy (EME), the expected operator and manager of the US Wind Force Pinnacle Wind Project (Mineral County), is not a cooperative partner. EME is the also the operator of the Lookout and Forward Wind Projects located in Pennsylvania. The largest operator of wind projects in US is Florida Power and Light (FPL), owner and operator of Mountaineer Project (Tucker County), is not a cooperative wildlife partner.
  - AFA recognizes there is distinct difference between a developer and owner / operator. US Wind Force signed the Pennsylvania Wind Energy Voluntary Cooperation Agreement on April 18, 2007. This is a voluntary agreement for Pennsylvania. This agreement does not obligate a developer, like US Wind Force to abide these guidelines in adjacent states. US Wind Force has ignored these guidelines in proposing to develop projects in Maryland and West Virginia.
  - A developer can agree to support the voluntary guidelines, but if the project is sold, the original developer is removed from the responsibility and the public relations promises. The current company is under no legal obligation to the original agreement. AFA in theory supports the agreement, we believe it only represents a public relations and marketing activity. It is utilized to avoid state and national regulation.
5. Eagles are abundant along the Allegheny Front. Radio Telemetry data from the Golden Eagle Project at Powdermill Avian Research Center (PARC) shows that the Pinnacle Project is an important geographical location for migrating eagles.<sup>27</sup> Eagle #41 was captured less than 20 miles from the proposed Pinnacle Project. In fall of 2009, the eagles migrate directly across the Pinnacle Project. In fall of 2008, Eagle # 69, and #603 migrated across the Pinnacle Project October 18 and Oct 6.<sup>28</sup>
  - In May 2011, Allegheny Treasures community wind blog site reported a bald eagle on a school playground. The eagle was less than 2.5 miles from the proposed project site. The eagle for foraging for food (fish) from the New Creek stream located in Keyser.<sup>29 30</sup>

---

<sup>26</sup> <http://www.portal.state.pa.us/portal/server.pt/community/pgc/9106>

<sup>27</sup> [http://www.aviary.org/cons/proj\\_wind.php](http://www.aviary.org/cons/proj_wind.php)

<sup>28</sup> [http://www.aviary.org/cons/track\\_archive.php](http://www.aviary.org/cons/track_archive.php)

<sup>29</sup> <http://alleghenytrees.wordpress.com/2011/05/11/recipe-for-disaster-a-bald-eagle-wind-turbines-and-an-incredibly-incurious-press/>,

<sup>30</sup> <http://alleghenytrees.wordpress.com/2011/04/22/6141/>

**Question: If the Guidance should not be binding in their entirety, which provisions should be binding?**

AFA supports the position for enforceable bindings. These requirements are for the project entirety—pre-construction, post construction, and for three years after required decommissioning.

AFA argues this position because we are concerned the greater community and the nation bears the financial responsibility to seek legal action to force the industrial wind developer and operator to secure responsible wildlife practices including an incidental take permit.

Social, economic and environmental justice issues are not served if the community must seek legal action. The direct and indirect effects of such action are obvious.

It is not the duty for the US FWS to promote the development of industrial wind. That duty falls to investors, developers and the operators. The duties and mission of the US FWS are stated and directed by Congress.

The Bald and Golden eagles are national symbols. Several years ago, the Bald Eagle was listed RTE species. The USFWS did not hold the position to promote responsible DDT use. The USFWS mission was to protect. US FWS intervention proved effective. Big Industrial Wind represents the same threat as DDT.

US FWS has an international duty to protect migrating birds.

Sincerely,

Frank J. O'Hara co chairperson Allegheny Front Alliance

Gregory Trainer co chairperson Allegheny Front Alliance